

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 349

Introduced by Assembly Member Gatto

February 13, 2013

An act to ~~amend Section 45125 of~~ *add Section 45118* to the Education Code, relating to school administration.

LEGISLATIVE COUNSEL'S DIGEST

AB 349, as amended, Gatto. Classified employees: ~~background checks;~~ *misconduct against a child: reports.*

Existing law authorizes the governing board of a school district to lay off and reemploy classified employees in accordance with specified procedures. Existing law requires classified employees subject to a layoff, to be effective at the end of the school year, to be given written notice on or before April 29 informing them of the layoff and of any displacement and reemployment rights.

This bill would require the superintendent of the employing school district or a charter school administrator to report a change in employment status to the State Department of Education when a classified employee is dismissed, is suspended, resigns, retires, or is otherwise terminated by a decision not to employ or reemploy, as a result of allegations of misconduct against a child, as defined. The bill would require the report to the department to contain all known information about each alleged act of misconduct and would require the department to maintain the report. By imposing a new duty on a school district or charter school, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires the governing board of a school district to require each person to be employed in specified positions to have 2 fingerprint cards bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description of the applicant prepared by a local public law enforcement agency having jurisdiction in the area of the school district and requires the agency to transmit these items to the Department of Justice. Existing law requires the Department of Justice to ascertain whether the person has been arrested or convicted of a crime and forward this information to the employing agency within 15 working days after receiving the fingerprint cards.~~

~~This bill would require the Department of Justice to forward this information within 10 working days.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45118 is added to the Education Code,
2 to read:
3 45118. (a) When a classified employee is dismissed, resigns,
4 is suspended, retires, or is otherwise terminated by a decision not
5 to employ or reemploy, as a result of an allegation of misconduct
6 against a child or while an allegation of misconduct against a
7 child is pending, the superintendent of the employing school district
8 or a charter school administrator shall report the change in
9 employment status to the department no later than 30 days after
10 the employment action.
11 (b) For the purposes of the this section, "allegation of
12 misconduct against a child" means an offense specified in Sections
13 11165.2 to 11165.6, inclusive, of the Penal Code, a sex offense as
14 specified in Sections 44010, and aiding or abetting the unlawful
15 sale to, use by, or exchange to minors of a controlled substance

1 *listed in Schedule I, II, or III as included in Sections 11054, 11055,*
2 *and 11056 of the Health and Safety Code.*

3 *(c) For purposes of this section, the term “school district”*
4 *includes a county office of education.*

5 *(d) The report shall contain all known information about each*
6 *alleged act of misconduct.*

7 *(e) The report shall be made to the department regardless of*
8 *any proposed or actual agreement, settlement, or stipulation not*
9 *to make such a report. The report shall also be made if allegations*
10 *of misconduct against a child served on the employee are*
11 *withdrawn in consideration of the employee’s resignation,*
12 *retirement, or other failure to contest the truth of the allegations.*
13 *The department shall maintain these reports by county and by*
14 *school district or charter school.*

15 *(f) The superintendent of an employing school district or a*
16 *charter school administrator shall, in writing, inform a classified*
17 *employee of the content of this section if that employee is dismissed,*
18 *resigns, is suspended, retires, or is otherwise terminated by a*
19 *decision not to employ or reemploy, as a result of an allegation*
20 *of misconduct against a child or while an allegation of misconduct*
21 *against a child is pending.*

22 *SEC. 2. If the Commission on State Mandates determines that*
23 *this act contains costs mandated by the state, reimbursement to*
24 *local agencies and school districts for those costs shall be made*
25 *pursuant to Part 7 (commencing with Section 17500) of Division*
26 *4 of Title 2 of the Government Code.*

27 **SECTION 1.** ~~Section 45125 of the Education Code is amended~~
28 ~~to read:~~

29 ~~45125. (a) (1) Except as provided in Section 45125.01, the~~
30 ~~governing board of a school district shall require each person to~~
31 ~~be employed in a position that does not require certification~~
32 ~~qualifications, except a secondary school pupil employed in a~~
33 ~~temporary or part-time position by the governing board of the~~
34 ~~school district having jurisdiction over the school attended by the~~
35 ~~pupil, to have two fingerprint cards bearing the legible rolled and~~
36 ~~flat impressions of the person’s fingerprints together with a~~
37 ~~personal description of the applicant prepared by a local public~~
38 ~~law enforcement agency having jurisdiction in the area of the~~
39 ~~school district, which agency shall transmit the cards, together~~
40 ~~with the fee required by subdivision (f), to the Department of~~

1 Justice, except that any district, or districts with a common board,
2 may process the fingerprint cards if the district so elects.

3 (2) ~~As used in this section, “local public law enforcement~~
4 ~~agency” includes a school district and as used in Section 45126~~
5 ~~requires the Department of Justice to provide to a school district,~~
6 ~~upon application, information pertaining only to applicants for~~
7 ~~employment by the district, including applicants who are~~
8 ~~employees of another district.~~

9 (b) (1) ~~Upon receiving the fingerprint cards, the Department~~
10 ~~of Justice shall ascertain whether the applicant has been arrested~~
11 ~~or convicted of any crime insofar as that fact can be ascertained~~
12 ~~from information available to the department and forward the~~
13 ~~information to the employing agency submitting the applicant’s~~
14 ~~fingerprints no more than 10 working days after receiving the~~
15 ~~fingerprint cards. The Department of Justice shall not forward~~
16 ~~records of criminal proceedings that did not result in a conviction~~
17 ~~but shall forward information on arrests pending adjudication.~~

18 (2) ~~Upon implementation of an electronic fingerprinting system~~
19 ~~with terminals located statewide and managed by the Department~~
20 ~~of Justice, the Department of Justice shall ascertain the information~~
21 ~~required pursuant to this subdivision within three working days.~~
22 ~~If the Department of Justice cannot ascertain the information~~
23 ~~required pursuant to this subdivision within three working days,~~
24 ~~the department shall notify the school district that it cannot so~~
25 ~~ascertain the required information. This notification shall be~~
26 ~~delivered by telephone or electronic mail to the school district. If~~
27 ~~a school district is notified by the Department of Justice that it~~
28 ~~cannot ascertain the required information about a person, the school~~
29 ~~district shall not employ that person until the Department of Justice~~
30 ~~ascertains that information.~~

31 (3) ~~In the case of a person to be employed in a position not~~
32 ~~requiring certification qualifications who is described in~~
33 ~~subparagraph (A) or (B), the school district shall request the~~
34 ~~Department of Justice to forward one copy of the fingerprint cards~~
35 ~~to the Federal Bureau of Investigation for the purpose of obtaining~~
36 ~~any record of previous convictions of the applicant.~~

37 (A) ~~The person has not resided in the State of California for at~~
38 ~~least one year immediately preceding the person’s application for~~
39 ~~employment.~~

1 ~~(B) The person has resided for more than one year, but less than~~
2 ~~seven years, in the State of California and the Department of Justice~~
3 ~~has ascertained that the person was convicted of a sex offense~~
4 ~~where the victim was a minor or a drug offense where an element~~
5 ~~of the offense is either the distribution to, or the use of a controlled~~
6 ~~substance by, a minor.~~

7 ~~(c) The governing board of a school district shall not employ a~~
8 ~~person until the Department of Justice completes its check of the~~
9 ~~state criminal history file as set forth in this section and Sections~~
10 ~~45125.5 and 45126, except that this subdivision does not apply to~~
11 ~~secondary school pupils who are to be employed in a temporary~~
12 ~~or part-time position by the governing board of the school district~~
13 ~~having jurisdiction over the school they attend.~~

14 ~~(d) The governing board of a district shall maintain a list~~
15 ~~indicating the number of current employees, except secondary~~
16 ~~school pupils employed in a temporary or part-time position by~~
17 ~~the governing board of the school district having jurisdiction over~~
18 ~~the school they attend, who have not completed the requirements~~
19 ~~of this section. The Department of Justice shall process these cards~~
20 ~~within 30 working days of their receipt and any cards in its~~
21 ~~possession on the date of the amendment of this section by~~
22 ~~Assembly Bill 1610 of the 1997-98 Regular Session within 30~~
23 ~~working days of that date. School districts that have previously~~
24 ~~submitted identification cards for current employees to either the~~
25 ~~Department of Justice or the Federal Bureau of Investigation shall~~
26 ~~not be required to further implement the provisions of this section~~
27 ~~as it applies to those employees.~~

28 ~~(e) A plea or verdict of guilty or a finding of guilt by a court in~~
29 ~~a trial without a jury or forfeiture of bail is deemed to be a~~
30 ~~conviction within the meaning of this section, irrespective of a~~
31 ~~subsequent order pursuant to Section 1203.4 of the Penal Code~~
32 ~~allowing the withdrawal of the plea of guilty and entering of a plea~~
33 ~~of not guilty, or setting aside the verdict of guilty, or dismissing~~
34 ~~the accusations or information.~~

35 ~~(f) (1) The school district shall provide the means whereby the~~
36 ~~fingerprint cards may be completed and may charge a fee~~
37 ~~determined by the Department of Justice to be sufficient to~~
38 ~~reimburse the department for the costs incurred in processing the~~
39 ~~application. The amount of the fee shall be forwarded to the~~
40 ~~Department of Justice with the required copies of applicant's~~

1 fingerprint cards. The governing board may collect a reasonable
2 fee payable to the local public law enforcement agency taking the
3 fingerprints and completing the data on the fingerprint cards. The
4 fees shall not exceed the actual costs incurred by the agency.

5 (2) The additional fees shall be transmitted to the city or county
6 treasury. If an applicant is subsequently hired by the board within
7 30 days of the application, the fee may be reimbursed to the
8 applicant. Funds not reimbursed to applicants shall be credited to
9 the general fund of the district. If the fingerprint cards forwarded
10 to the Department of Justice are those of a person already in the
11 employ of the governing board, the district shall pay the fee
12 required by this section, which fee shall be a proper charge against
13 the general fund of the district, and no fee shall be charged the
14 employee.

15 (g) This section applies to substitute and temporary employees
16 regardless of length of employment.

17 (h) Subdivision (e) of this section shall not apply to a person to
18 be employed if a school district determines that an emergency or
19 an exceptional situation exists, and that a delay in filling the
20 position in which the person would be employed would endanger
21 pupil health or safety.

22 (i) Where reasonable access to the statewide, electronic
23 fingerprinting network is available, the Department of Justice may
24 mandate electronic submission of the fingerprints and related
25 information required by this section.

26 (j) A school district shall request subsequent arrest service from
27 the Department of Justice as provided under Section 11105.2 of
28 the Penal Code.

29 (k) All information obtained from the Department of Justice is
30 confidential. An agency handling Department of Justice
31 information shall ensure the following:

32 (1) A recipient shall not disclose its contents or provide copies
33 of information.

34 (2) Information received shall be stored in a locked file separate
35 from other files, and shall only be accessible to the custodian of
36 records.

37 (3) Information received shall be destroyed upon the hiring
38 determination in accordance with subdivision (a) of Section 708
39 of Title 11 of the California Code of Regulations.

1 ~~(4) Compliance with destruction, storage, dissemination,~~
2 ~~auditing, backgrounding, and training requirements as set forth in~~
3 ~~Sections 700 through 708, inclusive, of Title 11 of the California~~
4 ~~Code of Regulations and Section 11077 of the Penal Code~~
5 ~~governing the use and security of criminal offender record~~
6 ~~information is the responsibility of the entity receiving the~~
7 ~~information from the Department of Justice.~~

8 ~~(l) Notwithstanding any other provision of law, the Department~~
9 ~~of Justice shall process pursuant to this section all requests from~~
10 ~~a school district, an employer, or a human resource agency for~~
11 ~~criminal history information on a volunteer to be used in a school.~~